

# CITY OF MERCED

"Gateway to Yosemite"



POLICE DEPARTMENT • 611 West 22nd Street, Merced, California 95340

(209) 385-6912

**TO:** William Avery, Police Officer  
**FROM:** Chris Goodwin, Chief of Police  
**DATE:** August 2, 2018  
**SUBJECT:** Notice of Discipline- --Relieved from Field Training Officer Duties

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You are being relieved from your duties as a Field Training Officer and are required to attend the training set forth below based upon findings that you have committed the following violations of Merced Police Department (MPD) Policies and City Personnel Rules and Regulations:

## MPD Policies

1. **300.3 USE OF FORCE** - Officers shall use only that amount of force that reasonably appears necessary given the facts and circumstances perceived by the officer at the time of the event to accomplish a legitimate law enforcement purpose.
2. **300.4 DEADLY FORCE APPLICATIONS** - Use of deadly force is justified in the following circumstances:
  - (a) An officer may use deadly force to protect him/herself or others from what he/she reasonably believes would be an imminent threat of death or serious bodily injury.



**COPY**

3. **322.3.3 SAFETY** - You are expected to conduct your work in a manner which is most likely to protect you and others from harm and facilities and equipment from damage. This means you are expected to:  
(b) Follow department policy in the use of firearms and other defensive weapons.
4. **308.2 OFFICER RESPONSIBILITIES** - It shall be the policy of this department that a vehicle pursuit shall be conducted only with red light and siren as required by Vehicle Code 21055 for exemption from compliance with the rules of the road. The following policy is established to provide officers with guidelines for driving with due regard and caution for the safety of all persons using the highway as required by Vehicle Code 21056.

21056 V.C states that Section 21055 (Exemption of Authorized Emergency Vehicles) does not relieve the driver of a vehicle from the duty to drive with due regard for the safety of all persons using the highway, nor protect him from the consequences of an arbitrary exercise of the privileges granted in that section.

### City Personnel Rules and Regulations

#### **Rule 20.02 - Causes for Disciplinary Action**

- D. Misconduct, willful or negligent violation of the personnel rules, resolutions, and other related ordinances including written departmental rules, regulations, and policies.
- N. Violation or neglect of safety rule.



## FACTUAL BASIS FOR ACTION

On September 21, 2017, at approximately 1:28 p.m. you were on-duty, wearing a full-dress uniform and driving a fully marked Merced Police Department vehicle when you attempted to take over a pursuit that Merced Junior College acting Chief Tom Trinidad initiated. In the area of G Street and West Olive Avenue, you got behind the suspect vehicle, which was being driven by John Barragan (Barrigan). Barragan continued west bound on West Olive Avenue and then went north bound through the parking lot of Jack in the Box to Fairfield Drive. Thereafter, he travelled west bound on Fairfield. Barragan subsequently ran into the center divider in the area of Fairfield and M Street. You drove up behind Barragan's vehicle while he was backing up. Barragan's vehicle stopped short of your patrol vehicle and came to a complete stop. Your patrol vehicle moved forward and collided with the rear of Barragan's vehicle at the approximate time that you were exiting your vehicle. You then fired several shots from your department issued firearm at the rear of Barragan's vehicle while it was travelling forward and turning onto north bound M Street.

The investigation of the pursuit and the officer involved shooting has resulted in a conclusion that you drove without due regard for the public's safety during the pursuit and used excessive and/or unreasonable force against John Barragan when you fired your weapon at Barragan's vehicle as he was driving away from the scene. At the time you fired your weapon, there was no evidence of an immediate threat made by the suspect against your life or the life of others. Your actions were not in compliance with the above stated Merced Police Department policies.

### Required Training on MPD Policies

You are to meet with Chief Goodwin to discuss and arrange training in the below areas:

- Pursuit Policy
- Tactical Communication
- Use of Force Policy
- *Hayes v. San Diego*

Officer Avery W. AVERY #211

Chief Goodwin

